

REMARKS

Claims 20-27 have been rejected under 35 USC 103(a) as being unpatentable over Stray-Gundersen in view of Paul et al and EP 387 042. Applicants respectfully traverse this ground of rejection and urge reconsideration in light of the following comments.

As explained previously, the instant invention is based on the discovery that electrolyte losses due to passive transpiration/perspiration is different from electrolyte losses from strenuous physical exertion and thereby requires different compositions for replenishment. Compositions used to replenish electrolyte levels lowered by strenuous physical exertion can be unsuitable and, in some situations, harmful in replenishing electrolyte levels lowered by passive transpiration/perspiration. The instant invention is directed to compositions for replenishing electrolytes lost by passive transpiration/perspiration and is patentably distinct over the prior art cited by the Examiner.

As discussed previously, the Stray-Gundersen reference is directed to hypotonic beverage compositions used to orally administer electrolytes and other ingredients to a human body. It is an express object of this reference to provide a hypotonic beverage composition formulated to rapidly replenish water, physiologically essential electrolytes, nutrient minerals and sweeteners such as carbohydrates or non-caloric sweeteners to a person who has lost water through dehydration caused by exercise, heat or illness. Since the beverage composition of Stray-Gundersen is intended to treat dehydration caused by any of exercise, heat or illness, there clearly is no recognition in this reference that different electrolytes need different levels of replenishment depending on how the electrolyte levels were lowered. Therefore, the secondary references cited by the Examiner must contain some suggestion or recognition that electrolytes lost through physical exertion are different from electrolytes lost through

passive transpiration/perspiration. It is respectfully submitted that the secondary references cited by the Examiner contain no such teaching or suggestion.

The Paul et al reference discloses a composition for providing sustained energy and nutrition to support an anabolic physiological state in humans. This reference indicates that the composition disclosed there is designed to treat physiological stress that accompanies protein calorie malnutrition, strenuous physical exercise, physical trauma, burn injury, surgical trauma, malnutrition, maldigestion, malabsorption, hyperthyroidism, chemotherapy, radiation therapy, anorexia, cachexia, short bowel syndrome, old age and sepsis. Like the previously discussed reference, there is no disclosure in this reference which suggests that electrolyte replenishment should be based on how the electrolytes were lost and that there is a difference in electrolyte loss from strenuous physical exercise and passive transpiration/perspiration. Therefore, this reference, like the previously discussed reference, does not suggest the advantages associated with the presently claimed invention.

EP 0 387 042 has been cited by the Examiner as teaching rutin as an antioxidant, nutritive element and stabilizer in various drinks, foods, beverages, and also as a preventative and remedy for diseases. However, this reference, like the previously discussed two references, contains no suggestion or disclosure that would suggest to one of ordinary skill in the art that an electrolyte replenishment composition for passive transpiration/perspiration should be different than a composition for replenishing electrolytes lost by strenuous physical activity. Therefore, it is respectfully submitted that this reference, in combination with the previously discussed references, do not even present a showing of *prima facie* obviousness with respect to the presently claimed invention.

In the outstanding Office Action, the Examiner has stated that Applicants have not presented any data supporting the argument that compositions used to replenish electrolyte levels lowered by strenuous exercise may be unsuitable and, in some situations, harmful in replenishing electrolytes lowered by passive transpiration/perspiration. In response to this statement, Applicants are enclosing herewith a study performed by the Istituto Di Medicina Di Laboratorio and an English translation of this study. This study was commissioned by the Applicants and not publicly available. As shown by this study, there is a different electrolyte replenishment need for passive transpiration/perspiration than there is for electrolytes lost by strenuous physical activity. This is clearly unexpected in light of the prior art cited by the Examiner and establishes the patentability of the presently claimed invention thereover.

The Examiner is respectfully requested to reconsider the present application and to pass it to issue.

Respectfully submitted,

TFC/smd

  
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Encl: Study performed by the  
Istituto Di Medicina Di Laboratorio  
and an English translation thereof  
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